United States Court of Appeals

for the Second Circuit

APPELLANT'S SUPPLEMENTAL BRIEF

74-1122

SUPPLEMENTAL

B
P/S

H.G. SKIDMORE
95-18 BALDWIN AVENUE
FOREST HILLS, N.Y. 11375

THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

H. G. SKIDMORE, Petitioner-Appellant	74 - 1122
vs	
NATIONAL RAILROAD ADJUSTMENT BOARD THIRD DIVISION Appellee	

SUPPLEMENT TO AMEND AND INCLUDE ADDITIONAL FACTS TO APPELLANT'S BRIEF ON APPEAL.

Point I

Information was introduced to the Lower Court in Petitioner's Reply To Amend Petition And Request, etc., to the effect that a resolution had been passed at a union meeting for the labor representative to protect the pass rights and privileges,even to arbitration, that were being deprived thru Mr. Perlman's edict of October 1969 and that the Organization refused to take protective measures. (Appendix item "A" docket entry 13, line 32 page 2 thru line 9 of page 3.)

It should also be noted reference was made to the fact that the Superintendent-Labor Relations, Mr. J. W. Shuron, had advised that the General Chairmen of all Organizations were notified of new pass policies promulgated. (Docket entry # 16 page 33 and 50.)

Therefore petitioner, because of absence of defense by the labor Organization, had to continue proceedings in an

attempt to protect those rights, rules, fringe benefits, etc., that had been promised. They had not been ruled or denied protection in the Pre-Merger Agreement.

Point VIII

On line 7 the word, attached, should be changed to, attacked.

Point XIII

Because it has been found in checking the submissions to the Lower Court by the National Railroad Adjustment Board that there must have been a loss or mix up of the petitioner's submissions appellant has included copies from his own files to indicate the wording that accompanied the signatories to this action. Also page 8 of ex parte submission to Award 19454.

Point XVI

A change should be made after the words 7-B-1 on page 17 line 3 to include, "should be followed".

Point XIX

The petitioner's reason for writing the Adjustment Board for clarification of this, "moot question", was due to his checking. Webster's definition of the adjective, "moot", is subject to or open for discussion or debate, debatable. Why is a debatable question answered, "Claim dismissed."?

Where collective agreements between railroad and employes made no special provision for passes dispute was cognizable in accord with contract for disposing of all disputes comprehensive. At.T. & SaFe.Ry.Co. v. Pub.Law Bd. 296 D.C.Ill.1972

Point XXIII

Referring to,"Opinion of Board", in Docket MS 19575 Award 19454, there will be found in item 3 the wording,

> "The Amtrak pass issue is moot account pre-empted by Federal Law enacted by the Congress of the United States. Claim dismissed."

Kindly refer,now,to page 96, the Adjustment Board's notice and instructions relative to the hearing set for October 25, 1972, at which time an invitation was extended to Mr. K. Housman, Director of Personnel, of the National Railroad Passenger Corporation. The second paragraph of this letter states,

> "The hearing is for the purpose of orally reviewing and arguing the evidence already presented. The Third Division is not disposed to accept evidence not heretofore presented."

Mr. Pickard, who was the representative of the Penn Central Transportation Company, was permitted to deliver his argument and presented allegations he considered relevant to the dispute. He alleged there was no reference to free transportation or rights of protection of them in the Agreement. The Merger Protective Agreement was not designed to protect passes and there was no reference to passes in paragraph 1(d)that covered the fringe benefits of the contract. He also indicated that many employes were dissatisfied with the changes that were an Amtrak prescribed policy. In addition Mr. Pickard introduced the information that Congress had passed new legislation to protect the employes pass rights and privileges and

and that no additional pass rights could be given. After including reference to local pass rights and benefits, which had no connection with the present dispute, except as to their protection, he concluded his presentation.

In my reply to Mr. Pickard's introductions it was stated that it was the duty of the Penn Central Transportation Officials to have protected the interests of the stock holders of the Company and the employes when making the contract with Amtrak. It was implied our protection was guarantied in Section 1 paragraphs (a) and (b) of the Pre-Merger Agreement. It was then emphatically stated that Mr. Pickard's reference to new legislation had no application to the present grievance for the grievance had been finished on the property by August of 1971 and the employes' pass rights were protected thru previous legislation by Congress and the Interstate Commerce Commission. The offer was then made by interruption by Mr. Pickard that he would offer to withdraw this inference provided I would confine my remarks to the local pass issues. This I declined to do in no uncertain terms and I in turn requested that the Board not accept this information in the dispute. Despite petitioner's protest it would appear th have been made a part of this Order of the Third Division. Although Mr. Cole, the Referee, and the other members of the Board were asked if they had any questions for me to answer before closing the hearing that had opened at 10:43 AM the only request was from

Mr. Fletcher who wished to know whether I had traveled on free transportation or my own expense. I advised Mr. Fletcher that although I had traveled free I had had to pay for my accommodations. Mr. Pickard allowed as how I was entitled to full pass privileges because of my tenure of service.

Here there is a decision, based on legislation of the Congress of the United States of America that was enacted in 1972, for a grievance that had been completed with the Carrier by August of 1971 and had been argued on legislation and policies that had been formulated and passed in 1971, 1970 and time immemorial thereto, previously.

It would appear, in this instance, that the Third Division has exceeded their authority in this "Opinion" by attempting to rule on a point beyond their jurisdiction, for Public Law 92-316 does not have legal application to this grievance. Therefore this Order of the Third Division must be set aside.

Despite the insistance of the appellant that Public Law 92-316 does not have application to this grievance but, in view of the Adjustment Board's, "Opinion of Board" 3, it might be only fair to review the provisions of said legislation.

It is my contention that Public Law 92-316 was primarily enacted by the Congress with the intent of documenting in more detail the legislation that had already been specified in Public Law 91-518 with the additional intention of reimbursement for the services to the employes by the various railroads. A careful review of Sections 7 and 8 of this Act indicates;

1. That Section 405(a) was amended in order to include employees of terminal companies amoung others.
2. The same including appears in the amendment for (b).
3. The subsection, (f) stipulates that the National Railroad Passenger Corporation shall take such action necessary to assure, to the maximum extend practicable, any former railroad employe shall be accorded transportation under the same policy that applied prior to Amtrak's commencement of operations. The National Railroad Passenger Corp. has dared to deliver the minimum benefits, even to the extent of denying service to former railroad employes, retirees and their dependents on certain days and during certain periods. This practice is contrary to the legislation as enacted and is in need of correction.

As incorporated in Public Law 91-518 Section 405 subparagraph(b)(5), protection for employes;

> "Such arrangements shall include provisions protecting individual employees against a worsening of their positions with respect to their employment which shall in no event provide benefits less than, those established pursuant to Section 5(2)(f) of the Interstate Commerce Act."

Inasmuch as the policies that applied to free and reduced rate transportation were without restrictions, prior to Amtrak, the present restrictive measures with regard to reservations is contrary to the legislation of record. There-

fore it would appear to be more truthful to label the, "Opinion of Board", arbitrary and capricious than it was for the Third Division's application of, "moot".

Point XXIV

In each of these Awards the Adjustment Board has stipulated in their, "Findings", that this Division of the Adjustment Board has jurisdiction over the dispute involved; herein. It is therefore difficult to reconcile this statement with that in the, "Opinion of Board", in:

Award No. 19554 - wherein the record indicates, that part of the dispute related to the Merger Agreement should be taken to an Arbitration Committee.

Award No. 19454 - 1. no claim covering this matter progressed on the property;

2. not properly before this Board and are dismissed;

3. account pre-empted by Federal Law;

for if the above items are fact, then in truth the Third Division did not have jurisdiction and these matters belonged before a different tribunal.

It is expected that Mr. J. C. Fletcher a vice president of B R A C, who is one of the labor appointees, would be familar with Mr. Skidmore's unsuccessful attempt to have the Organization protect the vacation grievance for he was served with a copy of the papers in the dispute and, I believe, present during the hearing, in August of 1970, at Rosemont, Illinois. It is also believed that because the Third Division

of the Board is comprised of five members appointed by the carriers and five by the labor organizations they would be acquainted with the fact that no formal action was being taken by the labor representatives, regarding the passes, and the reasons thereof.

Mr. Skidmore did, however, clearly state in his initial charge to the Adjustment Board, in each of these grievances,

> "The rules and practices in effect, on the property of the Penn Central Transportation Company for the handling and appeal of grievances having been complied with by the petitioner",

and there having been no challange or questions by the referee during the hearing that resulted in Award 19454 despite the fact the employe was not permitted a grievance on the propert y, appellant is of the firm belief that due to the inconsistency of these items there ia a valid reason for setting these decisions aside, and he did further include in his,"Statement of Claim", as presented, to the Board, in his ex parte submission of May 15th, 1971, (Award 19554),

> "I claim the Agreement entered into by and between the Pennsylvania-New York Central Transportation Company and Clerical Other Office, Station and Storehouse Employes of the Pennsylvania-New York Central Transportation Company represented by Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes has been abrogated by the act or actions during the processing and appeal of my grievance relative to pre-merger vacation rights, rules, and, or privileges",

Point XXV

The Rules Agreement, dated February 1, 1968, as evidenced by Rule 7-B-1(e) thru (h) limit the right of self protection when there is a claim for compensation or reimbursement. It is therefore questionable whether this rule is applicable in view of Rule 46 in the Memorandum of Agreement, dated October 6, 1954, Court exhibit # 2, which applied to the appellant by virtue of his former employment with the New York Central Railroad. This rule is found on pages 8, 9 and 10, of said exhibit in paragraphs 1 thru 5 and indicate an employe may process a grievance for compensation or reimbursement. Despite the fact the Carrier or labor organization may have agreed collusively or otherwise to deprive the employe of his rights it must not be permitted to prevail for it does deprive the employe the right of due process and self protection. The courst have previously held that no agreement can be made to supersede the employe's rights, that worsen his conditions, prior to the protection afforded at the time the merger agreement was made. See Richard Nemitz et al.,Plaintiff - Appelles v. Norfolk and Western Railroad Company, Defendant-Appellant. United States Court of Appeals Sixth Circuit No. 20326 January 1971.

Point XXVI

It is apparent the Interstate Commerce Commission recognized the right of employes, especially those who had retired, to certain pass rights and privileges, for Title # 49 U S C Chapter X Section 1270.3 provides protection for retirees to request

passes over their own individual signature in the event the Company they had worked for had abandoned service subsequent to the date of their retirement. This Act, by itself, indicates a degree of lifetime protection and warrants action by the courts to insure the legislation and agreements made for the employes is adhered to.

Respectfully submitted,

H. G. Skidmore

April 15th, 1974

H. G. Skidmore
Petitioner-Appellant

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11375

BO 3-2444

Copy to:

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Hon. Jack B. Weinstein
United States District Court
Eastern District of New York
225 Cadman Plaza
Brooklyn, New York 11201

H. G. SKIDMORE, Petitioner-Appellant

STATE OF NEW YORK)
COUNTY OF QUEENS) S.S:

CERTIFICATION OF SERVICE by MAIL

I, H. G. Skidmore, affirm that I am over the age of twenty one years. That I reside at 95-18 Baldwin Avenue Forest Hills, New York and that I am the petitioner-appellant in the annexed action.

I certify that on the 15th day of April, 1974 I served the annexed Supplement to Amend and Include Additional Facts to Appellant's Brief on Appeal together with Supplement to Appellant's Appendix on Brief of Appeal for File No. 74 - 1122 on the individuals named therein by depositing true copies thereof contained in a securely sealed postage paid wrapper, properly addressed, in the letter drop regularly maintained and exclusively controlled by the United States Government at the Main Post Office located on Eighth Avenue between 31st and 33rd Streets in the Borough of Manhattan, New York, N. Y.

H. G. Skidmore

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